



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 18, 2022

IN THE MATTER OF:

Appeal Board No. 623437

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Case Nos. 623437 and 623438, the claimant appeals from the decisions of the Administrative Law Judge filed April 25, 2022 which sustained the initial determinations disqualifying the claimant from receiving benefits, effective May 5, 2020, on the basis that the claimant refused an offer of suitable employment without good cause; and charging the claimant with overpayments of \$7,200.00 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; \$2,100.00 in Pandemic Emergency Unemployment Compensation (PEUC) repayable pursuant to § 2107 (e) (2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

Telephone conference hearings were held at which testimony was taken. There were appearances on behalf of the claimant and the employer.

The Board has considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: On April 7, 2019, the claimant began working for the employer, a daycare center, as a teacher's assistant, earning \$13.00 per hour. She worked full-time, from 9 a.m. to 6 pm, with a one-hour lunch period.

Because the center was open for 11 hours each day, staff schedules overlapped. The lead teacher with whom the claimant worked reported to the center before the claimant and left before the claimant's shift ended. As a result, the claimant worked alone with the children for two hours every day. She also worked alone with them when the lead teacher was absent or on vacation, although the employer would try to bring in another staff member from a different classroom if the daily teacher-child ratio allowed this. On March 22, 2020, the center closed due to the Covid-19 pandemic. The claimant filed a claim for benefits on March 23, 2020.

On May 4, 2020, the employer offered the claimant her job back, for 20 hours per week, starting on May 11. The employer told the claimant that because the employer was a part of the New York State Shared Work Program, the claimant would still be eligible for the weekly pandemic pay in addition to her regular pay. The claimant declined to return to work, telling the employer that she was fearful of contracting COVID-19 and infecting her family members, as she lived with an elderly grandfather and infant nephew. The claimant also suffers from Epstein-Barr syndrome and has a weakened immune system as a result; however, no doctor told her that she could not work for this reason. The employer also was implementing safety precautions that included personal protective equipment (PPE).

In a written statement made on June 4, 2020, the claimant advised the Department of Labor that she had refused the offer for this reason. Following her refusal of the offer, the claimant received \$7,200.00 in FPUC benefits, \$2,100 in PEUC benefits, and \$1,800.00 in LWA benefits.

OPINION: The credible evidence establishes that on May 4, 2020, the claimant refused an offer to return to her prior employment on May 11, 2020, because she was afraid of contracting COVID-19 and infecting vulnerable family members. We find it significant that the claimant's own testimony establishes that this was the only reason she gave the employer for refusing this particular offer and that she confirmed this in her written statement to the Department of Labor dated June 4, 2020. The claimant further conceded that no medical profession advised her that she could not work for this reason.

While the claimant's concern about her own health and that of her vulnerable family members is understandable, we find that her general fear of contracting COVID-19 does not provide her with good cause for refusing the offer of May 4, 2020. The claimant therefore is subject to a disqualification from benefits

and was overpaid. The benefits she received are recoverable pursuant to federal law.

DECISION: The decisions of the Administrative Law Judge are affirmed.

In Appeal Board Case Nos. 623437 and 623438, the initial determinations are sustained.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER